

National Environmental Policy Act (NEPA) Overview

City of Lakewood June 8, 2007





NEPA Basics

- **Š** Federal Act
- Š NEPA applies to all major federal actions and decisions
- Š Federal funding triggers the "federal action"
- Š HOWEVER...CDOT follows NEPA whether or not projects are federally funded!
- Š We follow CDOT's Environmental Stewardship Guide





CDOT's Environmental Stewardship

- **Š** Improve environmental conditions and quality of life when possible, not just comply with regulations
- Š Enhance environmental protection and encourage partnerships that promote eco-system conservation
- Š Address mobility and safety needs of the public
- $\check{\boldsymbol{S}}$ Provide education to our public
- **Š** Foster new ways to manage the

www.itre.ncsu.edu/aashto/stewardship







NEPA Case Law

- Š NEPA is Procedural—not substantive (it's the process; not the decision)
- Š Considerable deference given to the lead agency
- Š "Hard look" at significant environmental impacts
- Š Inform decision makers
- **Š** Reasoned decision
- Š Inform the public





Section 4(f)

- **Š** Substantive provision
 - Only applies to transportation agencies
 - NEPA applies to all federal agencies
- Š US Department of Transportation Act of 1966 (49 USC 303) and FHWA regulations (23 CFR 771.135)
- Š The Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that
 - There is no prudent and feasible alternative to using the land; and
 - the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

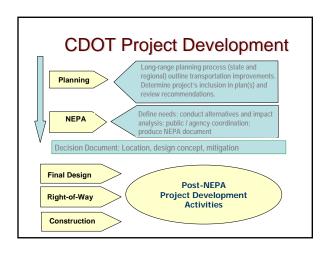


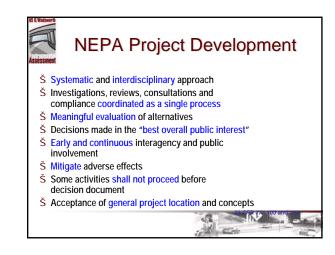


NEPA Umbrella

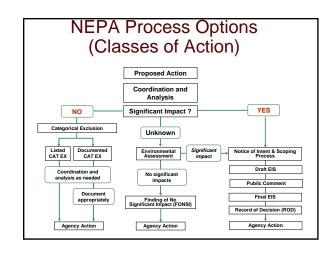
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Section 4(f) of USDOT Act (49 USC 303)
- Clean Air Act
- Safe Water Drinking Act
- Farmland Protection Policy Act Solid Waste Disposal Act
- Resource Conservation and Recovery Act of 1976 (RCRA)
- Title VI of Civil Rights Act of 1964
- Americans with Disabilities Act Executive Order 12898 (Environmental Justice)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- **Emergency Planning and Community** Right to Know Act of 1986
- National Historic Preservation Act
- Economic, Social and Environmental Effects of Highways and Transit
- Highway Noise Standards **Public Hearing Requirements**
- Archaeological and Historic Preservation
- Archaeological Resources Protection Act AND MORE.

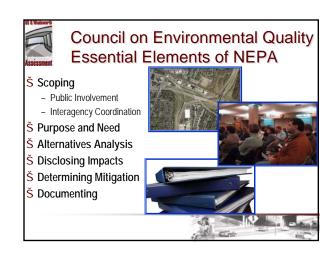


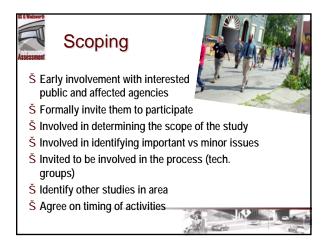














Public Involvement

- Š Coordination of public involvement activities and hearings with entire NEPA process ...
- Š ... Early and continuous opportunities for the public to be involved in identifying social, economic, and environmental impacts...
- Š ... via State public involvement procedures and requirements for public hearings





Other Agencies Assist CDOT

- S City of Lakewood
- S Colorado Department of Public Health and Environment
- Š Colorado Division of Wildlife
- Š Colorado State Historic Preservation
 Office
- Š Denver Regional Council of Governments
- Š Federal Emergency Management Agency
- **Š** Federal Transit Administration
- Š FHWA

- Š Jefferson County
- **Š** Regional Air Quality Council
- Š RTD
- **Š** Urban Drainage and Flood Control
- **Š** US Army Corps of Engineers
- Š US Department of Housing and Urban Development (HUD)
- Š US Department of Interior, Office of Environmental Policy and Compliance
- Š US Environmental Protection Agency
- Š US Fish and Wildlife Service





Agency Coordination

- Š Prior to concluding an EIS, the responsible Federal official must:
 - ... consult with and obtain the comments of any Federal agency with jurisdiction by law or special expertise with the impacted resources
 - ... provide copies of statement to Federal, State and local agencies and the public





Aspects of Agency Coordination

- Š Early and continuous participation in the NEPA process
- **Š** Special expertise and information
- **Š** Scoping agreements and understanding
- Š Establish timeframes
- **Š** Consultation and permitting (404/NEPA)
- **Š** Adoption of NEPA documents





Project Purpose and Need

- **Š** PURPOSE
- Š Identifies what you plan to do.
- Š Tells reader what your project (action) must accomplish to be considered a success.
- **Š** NEED
- Š Justifies why it's necessary.
- Š "This project is needed because..."





Purpose and Need

- Š Basis for decisions
- Š Provides critical foundation for deciding on alternative(s)
- Š Validates reasons for going forward with the federal action
- Š Basis for dismissal of no-action









FHWA Policy on Alternatives

- Š Alternatives evaluated and decisions made in the best overall public interest considering:
 - the need for safe and efficient transportation
 - social, economic, and environmental impacts
 - national, state, and local environmental goals
- Š Ensure meaningful evaluation of alternatives ...
 - Logical termini
 - Independent utility
 - Restrict consideration of alternatives for reasonably foreseeable improvement





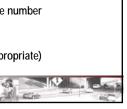
No Action Alternative

- Š Required in an EIS (40 CFR 1502.14[d]) and usually included in an EA
- Š Helps establish a baseline by which to measure the magnitude of effects of the proposed action
- Š Allows for a comparison of future conditions with and without the project
- Š Helps support and provide evidence for the need of the project
- Š For transportation projects, no action is rarely a "reasonable" alternative



Alternatives Analysis

- Š Varies with Class of Action ... CatEx, EA, EIS
- Š Rigorous and objective evaluation in the EIS
 - Reasonable range and number of alternatives
- Š Must include no-action or no-build
- Š Build alternatives representative number
 - improve existing
 - new location
- Š Modal and operational (where appropriate)
 - TSM alternatives, transit
- **Š** Avoidance and minimization







Resources Analyzed

- Pedestrians and Bicyclists

- Recreation
 Relocation/Right-of-Way
 Section 4(f) Resources
 (Parks, Historic Properties, and
 Wildlife Refuges)
 Sections representations
- Socioeconomics
- Š Soils
- Threatened or Endangered Species
- Transportation

- Vegetation
 Visual Quality / Aesthetics
 Water Quality/Water Resources
- Wetlands
- Š Wildlife and Fisheries

- Š Air Quality Š Archaeological Resources

- Energy
 Environmental Justice
 (Low-income or Minority Populations)
- Farmlands
- Floodplains
- Geology
- Hazardous Materials Historic Properties Land Use
- Noise











Types of Impacts

- Š Direct -- Caused by the action and occur at the same time and
- Š Indirect -- Caused by the action, later in time or farther removed in distance, but are still reasonably foreseeable... Growth inducing and other effects on air and water and other natural systems, including ecosystems, related to induced changes... in the pattern of land use, and ... population density or growth rate
- Š Alter behavior and function of affected environment caused by encroachment
- **Š** Project-influenced effects

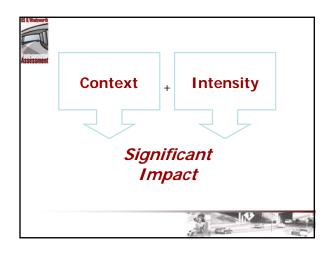




Types of Impacts (cont'd)

- **Š** Cumulative -- Result from incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions, regardless of agency or person that undertakes other actions
- Š Can result from individually minor but collectively significant actions taking place over a period of time











"Mitigation" includes:

- Š Avoiding the impact altogether by not taking a certain action or parts of an action.
- Š Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Š Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Š Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Š Compensating for the impact by replacing or providing substitute resources or environments.

40 CFR 1508.20





FHWA Mitigation Policy

- Š 23 CFR 771.105(d):
- Š "Measures necessary to mitigate adverse impacts will be incorporated into the action and are eligible for Federal funding when the Administration determines that:
 - (1) The impacts actually result from the Administration action; and
 - (2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures.





Mitigation Responsibility

- Š CDOT is responsible for implementing mitigation measures stated as commitments in environmental documents
- Š Environmental document can identify mitigation to be completed by others
- Š Often Interagency Agreements are developed to clarify roles and responsibilities of project implementation
- Š Ensure compliance with mitigation measures through project management
- Š Formal monitoring plan may be established (recommended where sensitive resources are impacted)

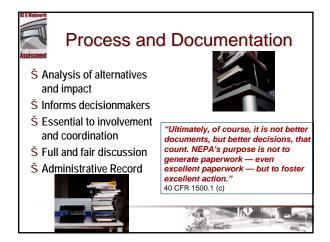




Considerations for Mitigation

- Š You may have to modify proposed project
- Š You may need to add additional avoidance or minimization measures
- Š You may need to providing compensatory mitigation for affected resources
- Š You may need to identify mitigation measures other parties can implement







Discussion

- **Š** Questions?
- Š Contacts:
 - Kirk Webb **CDOT Environmental Manager** 303.757.9826 Kirk.Webb@dot.state.co.us

 - Mandy Whorton Consultant Environmental Manager 720-286-5239

Mandy.Whorton@ch2m.com



